

1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF COOK )

4 IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT-CRIMINAL DIVISION

5 THE PEOPLE OF THE )  
STATE OF ILLINOIS ) Case No. 92 25414  
6 vs ) Charge: Murder  
7 JESSE CLEMONS ) Before: JUDGE EARL E.  
STRAYHORN  
November 19, 1992

8 MOTION TO SUPPRESS

9 RECORD OF PROCEEDINGS had in the hearing of the  
10 above-entitled cause.

11 APPEARANCES:

12 HON. JACK O'MALLEY,  
State's Attorney of Cook County, by  
13 MS. KAY HAWLON,  
Assistant State's Attorney,  
14 appeared on behalf of the People of  
the State of Illinois;

15 MR. RANDOLPH N. STONE,  
Public Defender of Cook County, by  
16 MR. FRED WELLISCH,  
Assistant Public Defender,  
17 appeared on behalf of the Defendant.  
18

19  
20  
21 ROCHINA V. CHOLEWA  
22 Official Court Reporter  
2650 S. California  
23 Chicago, Illinois 60608  
24

SP 119089

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

INDEX

Date of Hearing: November 19, 1992

Page Numbers: 1 to 41

PROCEEDINGS:

LIST OF WITNESSES	DX	CX	RDX	RCX	RDX
-------------------	----	----	-----	-----	-----

DET. KENNETH BOUDREAU	6	15	28		
-----------------------	---	----	----	--	--

STATE RESTS-----					29
------------------	--	--	--	--	----

ARGUMENT:

By: Mr. Wellisch-----					29
-----------------------	--	--	--	--	----

Ms. Hanlon-----					36
-----------------	--	--	--	--	----

COURT RULING-----					40
-------------------	--	--	--	--	----

1 September, 1991?

2 A. No, ma'am.

3 Q. While you were present on the same days did  
4 you ever allow people in the holding cell marked  
5 cage to converse with any of the in-custody  
6 defendants who were in any of the other rooms

7 A. No, ma'am.

8 MS. HANLON: Thank you, Judge. I have nothing  
9 else.

10 THE COURT: Recross?

11 MR. WELLISCH: I have nothing further.

12 THE COURT: Thank you, Det. Boudreau. You may  
13 step down.

14 (Witness excused.)

15 MS. HANLON: We have nothing else in rebuttal.  
16 We would rest.

17 (State rests in rebuttal.)

18 MR. WELLISCH: I would like to argue briefly if I  
19 might.

20 It is, is a you know in a case where  
21 we are seeking to suppress confession, it is the  
22 State's burden to prove by the preponderance of the  
23 evidence that this confession was not coerced.

24 What do we have or what has the State

1 presented to you and how have we answered that?

2           Essentially the State has presented  
3 to you what amounts to mere denials on the part of  
4 the various officers who were present, beginning way  
5 back when we first had testimony with Dets. O'Brien,  
6 Police Officer Maras (ph. sp.), I believe his name  
7 was, and Det. Maslanka and today rebuttal of Myron  
8 James' testimony by Det. Boudreau; mere denials  
9 nothing more than that.

10           We have also raised some questions  
11 regarding the injuries of Jesse Clemons.

12           If you remember way back I hope your  
13 notes reflect the fact that we have got a couple of  
14 the officers noticing injuries.

15           Det. Boudreau did not notice any  
16 injury to Jesse's hand but several of the officers  
17 who testified earlier did.

18           That raises, should raise a red flag  
19 in the Court's mind as to how Jesse got his  
20 injuries.

21           Now however what is key, your Honor,  
22 is this.

23           While the State presented mere  
24 denials on the part of the police we put before you

1 last time Myron James.

2 I hope you will agree that Myron  
3 James was a very credible witness.

4 I want to start out by saying Myron  
5 James has no motive to lie, to fabricate.

6 He began his testimony by saying "no  
7 one ever hit me, no one ever tortured me, no one  
8 ever threatened me."

9 He had no axe to grind with any of  
10 the police officers; not one.

11 Beyond that why is he credible?  
12 Because unlike the police officers who testified or  
13 unlike Det. Boudreau, who testified today and  
14 supposedly present for this interrogation on this  
15 lineup Myron James remembers where each and every  
16 person arrested that night was in Area 3, every  
17 single one of them.

18 Now let's talk about DO for a  
19 minute.

20 You may remember when he testified he  
21 said, "I am not quite sure where Diaz Owens was but  
22 I remember hearing his voice back here somewhere."

23 So he didn't even try to fabricate  
24 that. He walks in and says the first thing he

1 hears, he walks in with Jesse because they come in  
2 the same car is, "I hear Marcus Wiggins screaming."

3 "How do you know? You don't see  
4 him?"

5 "I grew up with Marcus Wiggins. I  
6 know his voice. He was screaming."

7 During the rest of his testimony,  
8 Judge, he tells you exactly what happened.

9 How does he know? He is sitting on a  
10 bench right here outside of Jesse Clemons' room.

11 He later gets moved to the cage. He  
12 is in an essential position.

13 He never said he saw anybody being  
14 beaten in the rooms. What he said was he heard  
15 people being beaten in the rooms.

16 He also said he saw police officers  
17 going into the office marked DC, that would be where  
18 Damoni Clemons was, with something black, not a  
19 flashlight, might have looked like a stun gun.

20 Now Myron James is credible. He  
21 couldn't remember, let's see. I think one of the  
22 questions that Miss Hanlon asked was could you  
23 describe the officers.

24 He said there were a lot of

1 officers.

2 Did some of them have moustaches she  
3 asked?

4 "Yes, some of them did. I don't  
5 remember which ones."

6 Is that relevant or does the fact  
7 that his recall is so good about what happened and  
8 who got beaten up and what Jesse looked like when he  
9 walked out into that lineup?

10 Myron James is a credible witness.  
11 His testimony is corroborated to some extent by  
12 testimony you heard early on from Jesse's mother,  
13 Casandra Clemons who says the police came to her  
14 house. She told them where Jesse might be. She  
15 went in a car with them. Jesse was later arrested  
16 and she is sitting in the alley and she sees them  
17 bringing Jesse down the stairs and beating him with  
18 their flashlights and their hands.

19 Now the police who testified have not  
20 denied that Casandra Clemons was on the scene. The  
21 testimony was that yes she was sitting in a squad  
22 car, a separate squad car, when Jesse was arrested  
23 and later in Area 3.

24 She said she heard screams.

1                   She was not sure which of her sons  
2                   but several of her sons were being beaten up or she  
3                   heard their screams.

4                   If you combine her testimony with  
5                   what happened on the street with Myron James' very  
6                   credible testimony about what happened in the cage  
7                   this amounts, we feel, to the State not carrying its  
8                   burden.

9                   Its burden is to show that Jesse's  
10                  confession was not coerced.

11                  The officers that testified the first  
12                  day remembered seeing his hand injured, Det.  
13                  Boudreau did not. But both Maslanka and Det.  
14                  O'Brien remembers that his hand was hurt.

15                  On top of that, your Honor, Jesse was  
16                  taken to the hospital.

17                  His mother testified that he went to  
18                  Mercy Hospital and that his hand was injured; he was  
19                  taken there.

20                  Now there is a case, your Honor,  
21                  People versus Banks, and in People versus Banks the  
22                  State is required to show how a person injured in  
23                  police custody got injured.

24                  There is a presumption that Clemone



1 might have been injured in police custody. They  
2 called Dr. Ramos to show why.

3 But I suggest Dr. Ramos' testimony is  
4 very interesting.

5 First of all who brings Jesse Clemons  
6 to Dr. Ramos? The police. Who takes him back? The  
7 police? Who are there while he is being examined?  
8 The police.

9 Jesse can't really, if he wants to  
10 save his hide can't really say to Dr. Ramos in the  
11 presence of the police "they beat me up" because he  
12 knows when he is taken back he will get beaten  
13 again.

14 What does he say? He says something  
15 very interesting, I feel, your Honor.

16 He tells the doctor, he says "how did  
17 you injure yourself."

18 "I injured my hand in a fight last  
19 night."

20 Now what does last night mean?

21 He is being examined September 26th  
22 in the morning. Last night was the night that he  
23 was arrested; in custody.

24 Now on his statement it says, at the

1 bottom of his statement that he signed, "I injured  
2 my hand earlier in the week in a fight."

3 What is consistent? The fact that he  
4 injured it in a fight.

5 What is not consistent? The fact he  
6 tells the police, "I injured it earlier in a  
7 fight."

8 What is he trying to tell Dr. Ramos?  
9 He can't say "the police beat it out of me last  
10 night." But he slips.

11 Where is the truth? The truth is  
12 last night. Where was he last night? In police  
13 custody.

14 I suggest, your Honor, that the State  
15 has not met its burden; that Jesse Clemons'  
16 confession was freely and voluntarily given and we  
17 would ask you to suppress his confession.

18 MS. HANLON: To begin with, Judge, the only  
19 evidence you heard of any injury to Jesse Clemons  
20 was a little injury to his finger.

21 What we have presented to you, Judge,  
22 was Dr. Ramos, who testified that she examined him  
23 and that Jesse Clemons told her he was involved in a  
24 fist fight on September 25th, 1991.

1                   If you remember, Judge, from Det.  
2 O'Brien's testimony that Jesse Clemons was not  
3 arrested until 2:00 clock in the morning September  
4 26th, 1991.

5                   We also presented testimony, Judge,  
6 from his handwritten statement, and in that  
7 statement it is right in there; Jesse states he  
8 injured his finger or injured his hand in a fist  
9 fight.

10                  That is the way it was. We are not  
11 trying to hide that. His finger was injured. It is  
12 absolutely true.

13                  No evidence that it was injured by  
14 the police. Quite to the contrary, Judge, and I  
15 don't want to argue, you already denied the motion  
16 based on the testimony other than Myron James, which  
17 counsel reopened --

18                  THE COURT: But I am considering changing. I  
19 find James very credible.

20                  Given the atmosphere that existed in  
21 that District with eleven people under suspicion in  
22 custody in the same location the atmosphere must  
23 have been horrendously oppressive and I am going to  
24 suppress the statements, but you can argue.

1 MS. HANLON: I would like to argue because I  
2 think that all the witnesses that they presented are  
3 inconsistent.

4 The mother initially tells you,  
5 Judge, she was there when Jesse was arrested in the  
6 apartment. The police brought her there. There is  
7 no quarrel about that.

8 The police brought her there to find  
9 Jesse Clemons.

10 She tells you the beating started  
11 inside a house.

12 THE COURT: I am not talking about the beating.  
13 I am concerned about the fact that eleven suspects  
14 in the same room being questioned periodically from  
15 time to time; that is oppressive. I am going to  
16 suppress it on the basis that I think there is a  
17 likelihood there was some screaming going on and I  
18 am going to suppress this statement.

19 MS. HANLON: You don't want to hear any other  
20 argument?

21 THE COURT: You can put your argument on the  
22 record but I will suppress the statement.

23 MS. HANLON: First of all Myron James, who he is  
24 calling a credible witness, he is on probation for a

1 drug charge.

2 THE COURT: That does not make him unbelievable  
3 because he is on probation.

4 MS. HANLON: How about --

5 THE COURT: You had a chance to cross examine  
6 him and you didn't touch him.

7 MS. HANLON: Judge, the only thing I can say as  
8 to Myron James is that he testified he is friends  
9 with Jesse Clemons, that he has known him for four  
10 years, he has been in a gang for seven or eight  
11 years. He told you he was friends with Marcus  
12 Wiggins.

13 What is interesting, Judge, is that  
14 if he now is coming forward to say that he sees  
15 someone getting hit, although when I asked him he  
16 said he didn't --

17 THE COURT: No. I am not basing my suppression  
18 on his credibility as to someone being struck. I am  
19 basing my ruling solely on the oppressive atmosphere  
20 that existed in that, in that headquarters on that  
21 evening with eleven people in custody being  
22 questioned about this crime.

23 MS. HANLON: If I may just address that point  
24 then as long as you are saying you are not finding

1 it on a beating and not finding it on any of the  
2 electric thing they brought up.

3 As far as the oppressive nature,  
4 Judge, Area 3 Violent Crimes; this is it.

5 THE COURT: But they don't have to bring eleven  
6 people up there. They have a holding cell  
7 downstairs. That they could have left everybody  
8 downstairs and brought them up individually.

9 MS. HANLON: Judge, out of the six defendants  
10 there was six defendants charged.

11 THE COURT: Finish up, Miss Hanlon, please.

12 MS. HANLON: They were all in separate rooms.  
13 There is nothing else the police could have done in  
14 the case.

15 THE COURT: Sure there is.

16 Motion to Suppress sustained.


17 January 11th for trial.

18 All right stand in recess until 10:00  
19 o'clock tomorrow morning.

20 (Which were all the proceedings had  
21 at the hearing of the above-entitled  
22 cause. Case continued to 1/11/'93.)  
23  
24

1  
2  
3 STATE OF ILLINOIS )  
4 COUNTY OF COOK ) SS:  
5

6 I, ROCHINA V. CHOLEWA, Official  
7 Court Reporter of the Circuit Court of Cook County,  
8 County Department-Criminal Division, do hereby  
9 certify that I reported in shorthand the proceedings  
10 had in the above-entitled cause, that I thereafter  
11 caused to be transcribed into typewriting the above  
12 Report of Proceedings which I hereby certify is a  
13 true and correct transcript of the proceedings had  
14 before the Honorable EARL E. STRAYHORN, Judge of  
15 said Court.

16   
17 Official Court Reporter of the  
18 Circuit Court of Cook County  
19  
20  
21  
22  
23  
24